

AMENDED IN ASSEMBLY MARCH 18, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1874**

**Introduced by Assembly Member Cohn**

February 3, 2004

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An act to add Section ~~7915 to the Public Utilities~~ 14666.9 to the Government Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

AB 1874, as amended, Cohn. Telecommunications: Broadband Deployment Act of 2004.

*Existing law requires the Director of General Services, with the approval of the state agency concerned, to negotiate, in the name of the state, access to state-owned property not used for highway purposes, for those purposes and subject to those conditions, limitations, restrictions, and reservations determined by the director to be in the interest of the state. Existing law provides that this requirement to negotiate access applies to telecommunications and information technologies. Existing law requires that, to the extent permitted under existing law, the Director of General Services determine the amount of consideration for, and the means of access, which includes, but is not limited to, a lease, permit, or other form of providing a monetary or service consideration for the access.*

*Existing law imposes similar requirements on the Director of Transportation with respect to state-owned highway rights-of-way.*

*Existing law requires the Director of General Services to compile and maintain an inventory of state-owned real property, excluding certain property, that may be available for lease to providers of wireless*

*telecommunications services for location of wireless telecommunications facilities, and to provide a requesting party, upon payment of any applicable fee, with a copy of the inventory.*

*This bill would adopt the Broadband Deployment Act of 2004 to require the Director of General Services, in consultation with the Director of Transportation, to develop a standardized application form to be used by a provider of telecommunications or information technologies for contracting with the director for access to state-owned property or for contracting with the Director of Transportation for access to state-owned highway rights-of-way. The bill would require The Director of General Services and the Director of Transportation to promptly and reasonably act upon an application for access to state-owned property or highway rights-of-way, to approve or deny an application within 45 days of the making of the application, and where an application is denied because it is incomplete, require that the denial identify what additional information or other matter is necessary to complete the application. The bill would require the Director of General Services and the Director of Transportation to adopt standardized contractual provisions to be included in a contract for access to state-owned property or a state-owned highway right-of-way, that require restoration of the property to preexisting condition, establish a construction schedule, and any other terms necessary to ensure that public disruption is minimized, while providing reasonable access to state properties and state highway rights-of-way for the expansion of telecommunications and information technologies infrastructure. The bill would provide for mediation and arbitration of any disputes.*

~~Under existing law, the Federal Communications Commission licenses and partially regulates providers of commercial mobile radio service, including providers of cellular radiotelephone service, broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR) services.~~

~~Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telegraph and telephone corporations, except to the extent regulation of commercial mobile radio service is preempted by federal regulation. Under existing law, the commission is required, unless excepted, to issue a certificate of public convenience and necessity for the construction of a line, plant, or system.~~

~~Under existing law, the legislative body of a local government is authorized to grant franchises for the construction of public utilities and~~

~~to permit the construction and maintenance of telegraph and telephone lines.~~

~~This bill would require that a city, county, or city and county, act within a specified time, upon an application by a mobile telephony services provider, defined to include cellular radio telephone service, PCS, and SMR, for a building permit, right-of-way permit, or other necessary authorization to erect poles or towers for the transmission of radiowaves to service existing or potential customers, and would authorize any additional cost incurred by the city, county, or city and county to comply with this requirement to be reflected in the fees charged mobile telephony services providers for making an application. The bill would require the commission to establish a standardized process to be utilized by a mobile telephony services provider in making an application to a city, county, or city and county for a building permit, right-of-way permit or other necessary authorization to erect poles or towers for the transmission of radiowaves to service existing or potential customers.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes no.~~

*The people of the State of California do enact as follows:*

- 1 SECTION 1. ~~Section 7915 is added to the Public Utilities~~
- 2 ~~14666.9 is added to the Government Code, to read:~~
- 3 ~~7915.~~
- 4 ~~14666.9. (a) This section shall be known, and may be cited,~~
- 5 ~~as the Broadband Deployment Act of 2004.~~
- 6 ~~(b) For purposes of this section, “mobile telephony services”~~
- 7 ~~means commercially available interconnected mobile phone~~
- 8 ~~services that provide access to the public switched telephone~~
- 9 ~~network (PSTN) via mobile communication devices employing~~
- 10 ~~radiowave technology to transmit calls, including cellular~~
- 11 ~~radiotelephone, broadband Personal Communications Services~~
- 12 ~~(PCS), and digital Specialized Mobile Radio (SMR). “Mobile~~

1 telephony services” does not include mobile satellite services or  
2 mobile data services used exclusively for the delivery of nonvoice  
3 information to a mobile device.

4 (e) A city, county, or city and county shall, within \_\_\_\_ days, act  
5 upon any application by a mobile telephony services provider for  
6 a building permit, right-of-way permit, or other necessary  
7 authorization to erect poles or towers for the transmission of  
8 radiowaves to service existing or potential customers. If the  
9 application for a permit or other necessary authorization is denied  
10 because it is incomplete, the denial shall identify what additional  
11 information or other matter are necessary to complete the  
12 application. Any additional costs incurred by a city, county, or city  
13 and county as a result of compliance with this section, may be  
14 reflected in the fees charged mobile telephony services providers  
15 for making an application.

16 (d) The commission, by rulemaking or other appropriate  
17 procedure, shall establish a standardized process to be utilized by  
18 a mobile telephony services provider in making an application to  
19 a city, county, or city and county for a building permit,  
20 right-of-way permit or other necessary authorization to erect poles  
21 or towers for the transmission of radiowaves to service existing or  
22 potential customers.

23 SEC. 2. No reimbursement is required by this act pursuant to  
24 Section 6 of Article XIII B of the California Constitution because  
25 a local agency or school district has the authority to levy service  
26 charges, fees, or assessments sufficient to pay for the program or  
27 level of service mandated by this act, within the meaning of  
28 Section 17556 of the Government Code.

29 (b) *In consultation with the Director of Transportation, the*  
30 *director shall develop a standardized application form to be used*  
31 *by a provider of telecommunications or information technologies*  
32 *for contracting with the director for access to state-owned property*  
33 *or for contracting with the Director of Transportation for access*  
34 *to state-owned highway rights-of-way.*

35 (c) (1) *The director shall promptly and reasonably act upon an*  
36 *application for access to state-owned property. The director shall*  
37 *approve or deny an application within 45 days of the filing of the*  
38 *application. If the application is denied because it is incomplete,*  
39 *the denial shall identify what additional information or other*  
40 *matter is necessary to complete the application.*

1 (2) *The Director of Transportation shall promptly and*  
2 *reasonably act upon an application for access to state-owned*  
3 *highway rights-of-way. The Director of Transportation shall*  
4 *approve or deny an application within 45 days of the filing of the*  
5 *application. If the application is denied because it is incomplete,*  
6 *the denial shall identify what additional information or other*  
7 *matter is necessary to complete the application.*

8 (d) (1) *The director shall adopt standardized contractual*  
9 *provisions to be included in a contract for access to state-owned*  
10 *property that require restoration of the property to preexisting*  
11 *condition. Every contract shall contain an agreed upon*  
12 *construction schedule and any other terms necessary to ensure that*  
13 *public disruption is minimized while providing reasonable access*  
14 *to state properties for the expansion of telecommunications and*  
15 *information technologies infrastructure.*

16 (2) *The Director of Transportation, in consultation with the*  
17 *director, shall adopt standardized contractual provisions to be*  
18 *included in any contract for access to state-owned highway*  
19 *rights-of-way, that minimize disruption to state-owned highway*  
20 *rights-of-way, that require reasonably prompt repair of any*  
21 *surface or subterranean damage or disruption to the*  
22 *rights-of-way, and that will restore the rights-of-way to preexisting*  
23 *condition. Every contract shall contain an agreed upon*  
24 *construction schedule and any other terms necessary to ensure that*  
25 *public disruption is minimized while providing reasonable access*  
26 *to state-owned highway rights-of-way for the expansion of*  
27 *telecommunications and information technologies infrastructure.*

28 (e) (1) *If the applicant and the director are unable to reach*  
29 *agreement on a construction schedule, contractual terms*  
30 *necessary to ensure that public disruption is minimized,*  
31 *contractual terms for restoration of the property to preexisting*  
32 *condition, or any other contractual terms the director seeks to*  
33 *impose to protect the public health, safety, and welfare, the*  
34 *applicant may request appointment of a mediator.*

35 (2) *If the applicant and the Director of Transportation are*  
36 *unable to reach agreement on a construction schedule, contractual*  
37 *terms necessary to ensure that public disruption is minimized,*  
38 *contractual terms for restoration of the state-owned highway*  
39 *rights-of-way to preexisting condition, or any other contractual*  
40 *terms the Director of Transportation seeks to impose to protect the*

1 public health, safety, and welfare, the applicant may request  
2 appointment of a mediator.

3 (3) The director shall establish procedures for the qualification  
4 and appointment of mediators. A mediator shall be appointed  
5 within seven days of the applicant requesting appointment and the  
6 mediator shall promptly commence the mediation process and if  
7 the mediation is unsuccessful in resolving any dispute, issue  
8 recommendations within 30 days for a resolution of any  
9 disagreement.

10 (4) If either party is unwilling to accept the recommendations  
11 of the mediator for resolution of the dispute, the party may within  
12 30 days of receipt of the recommendations, request binding  
13 arbitration. The director shall establish procedures for the  
14 appointment of impartial third party arbitrators and may contract  
15 with an established existing arbitration service to perform the  
16 arbitrations. The rules shall provide for prompt appointment of an  
17 arbitrator; that the arbitration be concluded and an award issued  
18 within 60 days. The parties may agree to one extension for up to  
19 30 days for conclusion of the arbitration process.

